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May 29, 2003

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VIA HAND DELIVERY

JUN 26 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

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Federal Communications Commission
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WEL

RE: 2002 Biennial Review - Review of the Commission's Broadcast
Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the
Telecommunications Act of 1996 (MB Docket No. 02-277) and Related
Proceedings (MM Docket No. 01-235, MM Docket No. 01-317, MM
Docket No. 00-244)

Dear Chairman Powell:

On behalf of Capitol Broadcasting Company, Inc. (CBC), I submit the following empirical data supporting repealing the UHF 50% discount as related to the national television ownership rule. Consistent with the Federal Communications Commission's Congressional mandate to repeal or modify any ownership rule that is no longer necessary in the public interest, CBC contends that the UHF discount is not only no longer necessary, but is actually harmful, to the public interest.

In addition, if the Commission treats UHF and VHF stations the same when counting voices to establish limits on local station ownership and cross-ownership, does it not follow that UHF and VHF stations be counted the same for the national ownership cap in order to maintain consistency?

First, we offer a side-by-side comparison of CBC's two analog stations located in Raleigh, North Carolina – a VHF, WRAL-TV Channel 5 (CBS – 100KW), and a UHF, WRZ-TV Channel 50 (FOX – 5 million watts located 230 feet below WRAL-TV on the same tower). Utilizing maximum power levels allowed by the Commission, we achieve almost equivalent coverage. See Attachment A. According to a comparison prepared by Cohen, Dippell and Everist, P.C. in May 2003, there is less than a 6% difference between our VHF and UHF signals based on the actual interference-free population reached within the Grade B service areas according to Longley-Rice. Our VHF station reaches approximately 1.8 million people, while our UHF reaches approximately 1.7 million. Therefore, the difference in off-air reach between the VHF and UHF signals is less than 6% – not 50% as implied by the current rule.

Secondly, we offer a ratings comparison between three stations in the Raleigh-Durham market by comparing comparable programs:

- Example 1 – Television's Biggest Single Event – The Super Bowl

As you aware, the Super Bowl rotates among CBS, ABC and FOX and is arguably the nation's largest annual television event – making it ideal for comparison purposes because it is essentially the same program every year. The delivery on WRAZ-TV, a UHF station, was 39.6 compared to the average of the two VHF years of 39.1.

The Super Bowl			
Year	Raleigh-Durham Station	Super Bowl HH Rating	Share
2001	WRAL, Ch. 5 (CBS) VHF	35.4	48
2002	WRAZ, Ch.50 (FOX) UHF	39.6	53
2003	WTVD, Ch. 11 (ABC) VHF	40.2	54

A.C. Nielsen Reported Ratings for 2001-2003

- Example 2 – Sunday NFL Football

During November 2002, WRAZ-TV (FOX – UHF) and WRAL-TV (CBS – VHF) each broadcast National Football League games with our UHF station consistently beating our VHF in the key 18-49 year-old male demographic.¹

¹ Although we believe that it is irrelevant to this comparison, for full disclosure purposes we note that the Carolina Panthers (Charlotte, NC) is a National Football Conference team and appears on FOX. Also, in Example 3, we note that Clay Aiken, a Raleigh resident, appeared on American Idol during this ratings period.

NFL Sunday Games

Raleigh-Durham Station	Sunday NFL Game 1 or 2	NFL HH Ratings
WRAZ-TV (FOX – UHF)	1	6.6
WRAL-TV (CBS – VHF)	1	5.8
WRAZ-TV (FOX – UHF)	2	10.1
WRAL-TV (CBS – VHF)	2	5.7

A.C. Nielsen Reported TV Ratings November 2002

- **Example 3 – Prime-Time Reality Hits**

FOX's American Idol and CBS' Survivor, break-out reality show hits, draw very close audience numbers on our UHF and VHF stations, based upon February 2003 ratings.

Prime-Time Reality Comparison

Raleigh-Durham Station and Program	18+ Ratings	18-49 Ratings
American Idol WRAZ-TV (FOX – UHF)	9.9	12.2
Survivor: Amazon WRAL-TV (CBS – VHF)	10.0	11.2

A.C. Nielsen Reported Ratings February 2003

As early as September 1980, the Commission recognized that “[t]he programming on a channel is the main determinant of whether a viewer will watch that channel.”² The above rating examples support the Commission’s 1980 observation. In summary, none of the above examples supports the 50% discount when comparing comparable programs on two of the Big Four networks, which is the most appropriate comparison.

Third, CBC offers a look at ratings in the top 50 TV markets comparing FOX VHF and UHF affiliates. As indicated in the following table, the difference between a VHF and UHF FOX affiliate based on ratings ranges from 4.2% to 8.6%, not 50%.

Top 50 TV Markets³
FOX Affiliates Prime-Time Ratings/Shares

Top 50 Markets	DMA Homes Rating	DMA Homes Share	Persons 18-49 Rating	Persons 25-54 Rating
VHF FOX Affiliates (25 VHF stations)	8.9 (8.6% greater than UHF)	13.0 (8.2% greater than UHF)	7.4 (4.2% greater than UHF)	7.3 (5.8% greater than UHF)
UHF FOX Affiliates (24 UHF stations)	7.5	11.0	6.8	6.5

A.C. Nielsen Reported Ratings February 2003

Any discount should be relevant to the current marketplace. According to most brokers, station values today are based upon cash flow (which results from ratings and, in turn, advertising sales) and network affiliations, not whether it is a UHF or a VHF facility – making our FOX empirical data more credible than comparing ratings and values of the less established networks, which also have a lot of UHF affiliates. The value of the latter stations is based upon lack of ratings and programming offered by a less popular network.

In summary, the above data supports the following:

1. Utilizing maximum power levels established by the Commission, UHF’s and VHF’s now achieve almost equivalent coverage areas, negating the original intent of the UHF discount.

² Staff Report on: Comparability for UHF Television: Final Report, UHF Comparability Task Force, Office of Plans and Policy, Federal Communications Commission, p. ix (September 1980).

³ This is actually 49 of the top 50 markets with Boston not reporting.


2. Programming is the key driver of ratings. When comparing similar programs on UHF and VHF, there is very little difference in ratings, demonstrating that viewers can find programming in which they are interested.

Further, must carry and carry one/carry all, in concert with today's multichannel video reach of 85% of TV households, have equalized the playing field between UHF and VHF stations. Combine the above off-air 6% differential and a comparison of like programs with must carry, carry one/carry all and the 85% multichannel penetration rate, and it becomes clear that no argument supports retaining the UHF discount at 50%. Add in the fact that according to the Commission's own digital table of allotments 94% of all digital stations will be UHF, and the current rule as written has no justification.

In the 1998 biennial review, the Commission noted "that the existing UHF discount will likely not work well for DTV" and "the eventual modification or elimination of the discount for DTV will be appropriate."⁴ The time is now for elimination of the UHF discount. It remains in the public interest to have a diversity of voices and the UHF discount serves to reduce those voices.

Thank you very much for your consideration.

Best regards,


James F. Goodman

Enclosure

Attachment A

cc. The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Adelstein
W. Kenneth Ferree, Chief of the Media Bureau

⁴ 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC 11058, FCC 00-191, MM Docket No. 98-35 (2000).

APPENDIX A

**COMPARISON OF INTERFERENCE-FREE POPULATION WITHIN
GRADE B SERVICE BASED ON LONGLEY-RICE
TO RALEIGH-DURHAM DMA BY
WRAL-TV AND WRAZ(TV), RALEIGH, NORTH CAROLINA
MAY 2003**

	<u>POPULATION SERVED BY GRADE B CONTOUR</u>	
<u>DMA COUNTY</u>	<u>WRAL-TV</u>	<u>WRAZ(TV)</u>
NORTH CAROLINA		
Chatham	37,297	30,332
Cumberland	258,045	257,750
Durham	180,600	180,596
Edgecombe	56,932	45,810
Franklin	34,386	33,852
Granville	37,212	34,234
Halifax	45,684	8,708
Harnett	67,590	67,173
Hoke	14,604	8,708
Johnston	77,542	77,542
Lee	41,330	41,158
Moore	47,929	30,275
Nash	79,655	78,548
Orange	100,945	97,150
Person	28,162	19,981
Sampson	36,918	47,232
Vance	37,655	34,812
Wake	429,869	429,869
Warren	19,289	12,258
Wayne	110,430	110,287
Wilson	69,001	69,001
VIRGINIA		
Mecklenburg	17,497	123
TOTAL	1,828,572	1,715,399

